

AMENDED IN ASSEMBLY MAY 3, 2005

AMENDED IN ASSEMBLY APRIL 19, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1043**

---

---

**Introduced by Assembly Member Harman**

February 22, 2005

---

---

An act to amend Section 481.5 of, and to repeal Section 393 of, the Insurance Code, relating to insurance premiums.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1043, as amended, Harman. Insurance: unearned premium.

Existing law requires that, whenever any admitted or nonadmitted insurer rejects, declines, or cancels any of certain policies of insurance and the unearned premium is tendered to an insurance broker or agent of record as the insurer's agent, the unearned premium be tendered by the broker or agent to the insured or the person entitled thereto within 30 days of his or her receipt of the unearned premium from the insurer, except as specified.

This bill would delete the above requirement.

Existing law requires that, whenever an insurer endorses, rejects, declines, cancels, or surrenders any of certain automobile or property insurance policies, the unearned premium be tendered to the insured or to the person entitled thereto or to the insurance agent of record as the insurer's agent for transmittal within 25 days after the cessation or amendment of coverage. Existing law requires that, if this unearned premium is tendered to the insurer's agent, the agent tender this premium to the insured or to the person entitled to the premium within a specified period after the agent receives the premium.

Existing law requires that whenever a policy not covered by the above provisions is canceled pursuant to certain provisions of law relating to premium financed policies, the unearned premium be tendered to the person entitled thereto or to the insurance agent of record as the insurer's agent for transmittal within 120 days after the cessation of coverage.

This bill would revise and recast these provisions. The bill would apply the provisions to all policies of personal lines insurance. It would eliminate the 120-day deadline for the return of unearned premium for premium financed policies, and would apply a 25-day deadline for the return of gross unearned premium. The bill would impose a 60-day deadline for the return of gross unearned premium when an insurer endorses, rejects, declines, cancels, or surrenders a certain type of commercial insurance policy, ~~except or a workers' compensation policy~~, as specified.

The bill would impose specified requirements on insurers, brokers, and others with respect to returning unearned premiums, providing notice, and applying offsets to amounts owed to insureds. It would require an insurer to provide an accounting to the insured regarding the calculation of an unearned premium refund, and would ~~require~~ *provide that* the Insurance Commissioner ~~to~~ *may* adopt regulations regarding this accounting.

The bill would allow an insurer, in its policy, to reserve the right to apply the unearned premium generated by an endorsement removing or reducing coverage for an insured person or property to the balance owed on the policy as a whole, rather than tendering a refund of the unearned premium.

The bill would make other technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 393 of the Insurance Code is repealed.
- 2 SEC. 2. Section 481.5 of the Insurance Code is amended to
- 3 read:
- 4 481.5. (a) Whenever an insurer endorses, rejects, declines,
- 5 cancels, or surrenders a policy of personal lines insurance, or
- 6 such a policy is canceled pursuant to Section 673, the insurer

1 shall tender the gross unearned premium to the insured, unless  
2 subdivision (b) applies.

3 (b) If the insurer has been provided with a notification of  
4 written assignment in which the insured transferred his or her  
5 right to receive the unearned premium to ~~a producer~~ *an agent or*  
6 *broker* or premium finance company, the insurer may, at its  
7 election, tender the gross or net unearned premium to the  
8 ~~producer~~ *agent or broker* or premium finance company. If the  
9 insurer tenders the net rather than gross unearned premium, it  
10 shall remain liable for payment of the gross unearned premium if  
11 ~~a producer~~ *an agent or broker* fails to remit unearned  
12 commission to the insured or premium finance company.

13 (c) The gross unearned premium shall be tendered to the  
14 appropriate party within 25 days after the insurer receives notice  
15 of the event that generated the gross unearned premium, or  
16 within 25 days after receipt by the insurer of notice from a  
17 premium finance company of a cancellation pursuant to Section  
18 673.

19 (d) ~~(1)~~ Whenever an insurer endorses, rejects, declines,  
20 cancels, or surrenders a policy of commercial insurance, as  
21 defined in Section 675.5, *or workers' compensation insurance,*  
22 *as defined in Section 109,* the gross unearned premium shall be  
23 tendered as provided in subdivision (a) of this section within 60  
24 days, ~~or 75 days,~~ if the policy is auditable, *within 60 business*  
25 *days after the policyholder provides all requested audit*  
26 *information to the insurer.*

27 ~~(2) Notwithstanding paragraph (1), an insurer shall not be~~  
28 ~~required to tender the unearned premium within 75 days if the~~  
29 ~~final unearned premium amount cannot be determined due to the~~  
30 ~~insured's failure, in breach of a policy requirement, to cooperate~~  
31 ~~with the insurer in a premium audit.~~

32 (e) Any unearned premium that an insurer fails to tender  
33 within the time periods specified in subdivisions (c) and (d) shall  
34 bear interest at the rate of 10 percent per annum from and after  
35 the date on which the unearned premium was required to be  
36 tendered. For the purposes of this section, the tender of any  
37 unearned premium to the insured shall be deemed complete upon  
38 the deposit of the unearned premium in the United States mail,  
39 prepaid, addressed to the named insured at the last known  
40 address.

(f) For the purpose of this section, the following definitions apply:

(1) “Gross unearned premium” means the unearned portion of the full amount of the premium charged to the insured, including the unearned portion of any amount of the premium the insurer allocated to ~~a producer~~ *an agent or broker* as commission.

(2) “Net unearned premium” means the gross unearned premium minus the unearned commission.

(g) The interest penalty required by this section shall not apply to any insurer in conservatorship or liquidation, nor shall such an insurer be subject to any other penalty for failure to remit unearned premium in accordance with the time periods required by this section.

(h) (1) An assignment under subdivision (b) shall be valid only for the purpose of paying the ~~producer~~ *agent or broker* for a premium the insured owes the ~~producer~~ *agent or broker* on the same or another policy.

(2) If the insured notifies the insurer, 15 or more days after the insurer’s tender of unearned premium to the ~~producer~~, ~~that the producer agent or broker~~, *that the agent or broker* has failed either to remit the unearned premium to the insured or to issue to the insured an accounting of an offset permitted by Section 1735.5, the insurer shall, within an additional 15 days, either tender the unearned premium directly to the insured or provide the insured with the ~~producer’s agent or broker’s~~ accounting of an offset permitted by Section 1735.5.

(3) Whenever an insurer tenders the net rather than gross unearned premium to a ~~producer agent or broker~~ or premium finance company, the insurer shall contemporaneously notify the ~~producer agent or broker~~ of the amount of the unearned commission.

(4) If an insurer elects to tender the net rather than the gross unearned premium to a premium finance company, the insurer shall document that the ~~producer agent or broker~~ tendered unearned commission to the premium finance company within 25 days after the event that generated the unearned premium, or within 25 days after receipt by the insurer of notice from a premium finance company of a cancellation pursuant to Section 673.

(i) Whenever a ~~producer~~ *an agent or broker* receives unearned premium from an insurer or its agent, a premium finance company, another ~~producer agent or broker~~, or any other person on account of an insured, the ~~producer agent or broker~~ receiving the money shall tender that money to the insured, or account to the insured for any offset permitted by Section 1735.5, within 15 days. If the ~~producer agent or broker~~ fails to tender payment of the unearned premium within 15 days, the ~~producer agent or broker~~ shall pay the insured interest at the rate of 10 percent per annum from the date on which the money was required to be tendered.

(j) In addition to the required unearned premium refund, an insurer shall provide both the insured and the ~~producer agent or broker~~, upon the request of either, with an accounting and explanation of how the amount of the refund was calculated. The explanation shall be clear, concise, and easy to comprehend. The commissioner ~~shall~~ *may* adopt regulations setting forth standards to govern this subdivision.

(k) For purposes of subdivisions (a) to (d), inclusive, if the unearned premium is not assigned as security to a premium finance agency pursuant to a premium finance agreement and the amount of unearned premium is less than twenty-five dollars (\$25), tender of unearned premium shall include applying the amount of unearned premium either to the renewal premium at the next renewal date or to other premiums due, provided written notice of either application is given to the insured within 30 days after the endorsement, rejection, declination, cancellation, or surrender of a policy of insurance. At the time of endorsement or surrender of a policy of insurance or, within 15 days after the mailing of the written notice required by this subdivision, the insured may request in writing that the unearned premium be tendered as provided in subdivisions (a) to (d), inclusive. Whenever the amount of unearned premium is less than five dollars (\$5), tender shall be effective and the written notice required by this subdivision shall not be required if the unearned premium is applied either to the renewal premium at the next renewal date or to other premiums due.

~~(k)~~

(l) Notwithstanding subdivisions (a) to (d), inclusive, an insurer may, in its policy, reserve the right to apply the unearned

- 1 premium generated by an endorsement removing or reducing
- 2 coverage for an insured person or property to the balance owed
- 3 on the policy as a whole, rather than tendering a refund of the
- 4 unearned premium.

O